Jersey as a jurisdiction for family investment vehicles

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Jersey is one of the world's major international finance centres. Its successful combination of stability and reliability combined with tax neutrality has kept Jersey at the forefront of global finance for almost half a century.

During this time Jersey has gained a strong reputation as a prime location in which to establish both family offices and investment vehicles. The industry has developed within the Island's stable political and fiscal infrastructure, and the wealth of experience and expertise offered by the Island's highly-skilled financial service providers gives an unparalleled experience to clients.

Many of the world's wealthiest families have either based their family office headquarters in Jersey or use the services of a locally regulated trust company business as a key part of their operations. Increasingly, these families are using structures that closely resemble private funds to invest and manage a variety of assets.

These family investment vehicles ("FIVs") can be set up quickly and economically and can give bespoke voting, income and capital rights to family members. FIVs can be established as any one of a number of different vehicles – the precise structure will depend on the tax and governance framework required by the client. The most common are listed below.

Choice of vehicles

Unit trusts

A unit trust is not a separate legal entity but is constituted by an agreement in writing, commonly known as a trust instrument, executed by a trustee, which is typically either a regulated trust company business, or an entity established specifically for the purpose of acting as trustee and holding title to the relevant assets

The trust concept has been recognised in Jersey for over one hundred years and trusts generally are governed by the provisions of the Trusts (Jersey) Law, 1984.

The interests of investors in a unit trust are represented by units, which can carry equal or weighted rights to capital and/or income. Neither the trust instrument nor the register showing the identity of unitholders is a public document. Control is exercised at the level of the board of the trustee, which may appoint one or more investment managers/advisers to assist it. Unitholders may also be granted control/voting rights similar to those attaching to shares in a company. There is typically no requirement to file any annual return or accounts and no audit requirement. Unit trusts can normally be structured as transparent or opaque for tax purposes, and can also in some circumstances be opaque for income purposes but transparent for capital purposes.

Limited partnerships ("LPs")

Limited partnerships are now the favoured vehicles for many structures investing in illiquid assets and can be established in three ways:

i) "Traditional" Jersey LPs ("JLPs"), which are similar to English LPs, are established under the Limited Partnerships (Jersey) Law 1994;

ii) Separate LPs ("SLPs"), which have separate legal personality and are therefore similar to Scottish LPs, are established under the Separate Limited Partnerships (Jersey) Law 2011; and

iii) Incorporated LPs ("ILPs"), which have separate legal personality and are bodies corporate, are established under the Incorporated Limited Partnerships (Jersey) Law 2011.

A JLP/SLP/ILP is usually created by a written limited partnership agreement which is signed after the LP has been issued with a certificate of registration.

A JLP/SLP/ILP consists of one or more general partners who have unlimited liability for all the debts of the partnership and one or more limited partners, who are not liable for any debts of the partnership beyond the amounts they contribute or agree to contribute.

Neither the limited partnership agreement nor the register showing the identity of limited partners is a public document. There is typically no requirement to file any annual return or accounts and no audit requirement.

The interests of investors in a LP are represented by limited partnership interests, and there is great flexibility in defining the extent of the limited partners' rights (including rights of redemption), any rights of any partner(s) to receive carried interest, profit share and/or other payments and the scope of any restrictions on the general partner's discretion.

Control of a LP is exercised at the level of the board of the general partner (which may appoint managers or advisers as required) - a limited partner may not participate in the day-to-day management of the LP but may have involvement in certain key decisions through consent or voting rights.

JLPs and SLPs are usually treated as transparent for tax purposes and counsel's advice is that ILPs should receive the same treatment.

Companies

Companies are incorporated under the provisions of the Companies (Jersey) Law 1991 and are governed by the provisions of a constitutional document known as the memorandum and articles of association.

Relevant Jersey law is based on UK company law but with certain enhancements that allow for a more flexible and practical regime. It therefore allows families and managers to operate within a familiar legal landscape but to operate with greater freedom. Some key highlights include: no legal requirement for Jersey resident directors, a flexible capital maintenance regime (allowing distributions, redemptions or repurchases of shares to be made on a solvency test basis and be funded from virtually any source) and no statutory pre-emption on share issuances or transfers.

The interests of investors in a company are represented by shares, and different classes of shares can be established with differing income, capital and voting rights. The share register and articles of association of a company are available for public inspection but nominee shareholder arrangements can be used for enhanced confidentiality if required.

Control is exercised by the board of the company – the articles of association may however provide shareholders with specific consent or voting rights.

It is also possible to establish protected cell companies and incorporated cell companies which enable investments and investor interests to be effectively ringfenced within a single structure.

All of the foregoing vehicles can be established in a manner which permits influence and control to be exercised in a prescribed manner - either through the trustee, general partner or company board or through the establishment of supervisory, guidance or investment committees. All vehicles can also effectively control transfer of investor interests and require mandatory redemption of interests in certain circumstances.

It is hard to overstate the flexibility inherent in Jersey structures – it is very rare that we see a client request that cannot be accommodated.

Regulation

Investment vehicles which are established for the purpose of holding and managing family assets generally fall outside Jersey's funds regulations on the basis that offers of interests are not made to third parties and the Jersey Private Fund (JPF) Guide specifically exempts arrangements between family connections, which is broadly defined, from the application of the JPF Guide. A FIV properly structured as a joint venture between various family members will also not require authorisation as a fund in Jersey.

A special purpose Jersey vehicle ("SPV") can be established to act as trustee, general partner, manager or investment adviser to a FIV. These SPVs do not generally need to be regulated as it is usually possible to establish the FIV as a 'professional investor regulated scheme' for Jersey purposes which triggers key exemptions to requirements for financial services regulation. It is however common for each FIV and SPV to be provided with administrative services by a Jersey-regulated trust company business as specialist administrative, compliance and governance services are often required by clients.

If there is a desire to expand the investor base of a FIV beyond the family and raise monies from third parties, or the exemptions above are not available, then a JPF is an excellent choice as a fund investment vehicle. A JPF can be authorised on a fast-track basis and benefits from lighter touch regulation compared to a collective investment fund. Please see here for more detail on the JPF regime.

Conclusion

The increasingly sophisticated demands of ultra-high net worth individuals and their families have seen a notable rise in the use of FIVs. Each offers a combination of key typical client requirements – asset protection, confidentiality, reputation management, efficient tax management, effective succession control and flexibility.

Continued

Jersey's neutral, transparent and user-friendly positioning and strength in depth of service providers has led to Jersey vehicles becoming the leading choice for FIVs.

Carey Olsen has significant experience in developing and delivering these structures and our partners, who sit on industry and government working groups, have been directly involved in drafting applicable laws and regulations. We are ideally placed to help our clients plan for the future of their assets and their families.

To find out more, please contact one of the partners listed below.

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